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Health and Human Services Agency California Office of HIPAA Implementation

INFORMATION MEMORANDUM

TO: Department HIPAA Coordinators
Department HIPAA Privacy Officers
Department HIPAA Legal Counsels

FROM: CALIFORNIA OFFICE OF HIPAA IMPLEMENTATION (CalOHI)

Title: HIPAA Privacy State Law Baseline	Number: IM-2002-04
Subject: California state law relationship to HIPAA rules	Issue Date: August 27, 2002
Reference(s): Federal HIPAA Regulations [45 C.F.R. Parts 160 and 164] Information Practices Act [Civ. Code section 1798, et. seq.] Confidentiality of Medical Information Act [Civ. Code section 56, et. seq.] Patient Access to Health Records Act [Health and Saf. Code section 123100, et. seq.]	Expiration Date: N/A

PURPOSE

CalOHI is providing the attached worksheets for departments to use in implementing the HIPAA privacy regulations. The worksheets list all major HIPAA privacy tasks and requirements, and also identify the major California state laws that govern health information privacy and pertain to the requirements in the HIPAA privacy regulations. The state laws reflect processes or tasks that are currently required (baseline).

In addition, the worksheets will assist you in preparing the project plan that CalOHI will be requesting HIPAA-impacted departments to complete. The project plan will become part of the statutorily-required HIPAA Statewide Master Plan.

The implementation deadline for HIPAA privacy regulations is April 14, 2003. ~ 235 calendar days to the compliance deadline ~

WORKSHEET Project Phases

We organized the tasks and requirements into the five standard phases that CalOHI used in its initial departmental Assessment and will also use in the Statewide Master Plan to track the implementation status of state departments.

- Project Initiation (Awareness)
- Initial Assessment (Inventory)
- Project Plan Preparation
- Detailed Assessment (Gap Analysis)
- Testing and Implementation

State Law Baseline

Where a corresponding law exists for a task or requirement, we indicate which state law(s) has/have similar requirements to the HIPAA privacy regulations. The state laws identify baseline business practices currently required in California for health information privacy. Please see attached glossary for definitions.

The state laws provided in these worksheets are not all inclusive. Many other state laws governing health information privacy exist for different programs. **You should consult with your legal counsel concerning other state laws governing privacy or confidentiality that may apply to your programs.**

Identifying Any Gaps

Comparing your department's current business practices to the HIPAA requirements will help you identify any gaps. Gaps indicate the business practice changes that will be necessary for your department to be compliant with the HIPAA Privacy regulations.

Reporting Data

Each task and requirement is identified as a milestone or deliverable to help track major activities. The start date, the projected and actual end date, and the percent-completed columns provide a tracking tool to monitor implementation of the HIPAA privacy regulations.

Preemption

The attached worksheets are not related to the CalOHI Preemption Analyses that identify state laws preempted by, or more stringent than, HIPAA regulations. Preemption analyses are posted in the "Legal Issues" section of the CalOHI website at www.ohi.ca.gov as each law is completed.

NEXT STEPS

Use the worksheets to evaluate your department's compliance with current state laws and with the new HIPAA Privacy regulations, and identify any gaps. Then, establish a schedule for closing each gap, and begin to track your department's progress.

CalOHI is not requiring that the worksheets be returned. However, they will be an essential tool in preparing your project plan, and useful documentation for your department.

CalOHI will be issuing a Policy Memorandum that will require the preparation and submission of a project plan for your department reflecting the tasks identified in this worksheet, as well as others outside of the privacy area. The project plan will become part of the statutorily-required HIPAA Statewide Master Plan.

CONTACT

To obtain an electronic copy of this Information Memorandum, please see the CalOHI website at: www.ohi.ca.gov. Please contact Bobbie Holm at (916) 651-6906 or at Bholm@ohi.ca.gov if you have questions.

Original signed by Therese Hart for

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Acting Director

California Office of HIPAA Implementation

Attachments

c: HIPAA Steering Committee Members
Steve Kessler, Department of Finance
Peter Harbage, Health and Human Services Agency

HIPAA PRIVACY STATE LAW BASELINE

GLOSSARY AND BACKGROUND

- California has numerous state laws that require specified treatment of health information related to its privacy. The three major laws that have overarching impact to state departments are the Information Practices Act (IPA), the Confidentiality of Medical Information Act (CMIA), and the Patient Access to Health Records Act (PAHRA).
 - The **IPA** governs individually identifiable personal information maintained by state agencies. Note: The IPA does not apply to non-state governmental entities such as cities or counties.
 - The **CMIA** governs release of medical information maintained by providers of health care and any organization whose primary purpose is maintaining or processing medical information.
 - The **PAHRA** governs access to medical records maintained by health care providers.

Both the CMIA and PAHRA apply to all government entities, i.e., state, county, and city. The CMIA and PAHRA also apply to private providers and organizations.

- The federal **HIPAA privacy regulations** govern protected health information (PHI) maintained by covered entities. Covered entities include health care plans, health care clearinghouses, and health care providers who use electronic transactions. The privacy regulations hold covered entities responsible for the actions of organizations (business associates) that, through contracts, perform functions for the covered entities.
- PHI is individually identifiable health information created, received, or maintained by a covered entity that is transmitted by electronic media, maintained in electronic media, or maintained any other medium.